SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. 659

GUST YIATCHOS, PETITIONER,

vs.

PEARLE W. YIATCHOS, ETC., ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

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[fol. 2] [File endorsement omitted]

[fol. 3]

IN THE
SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF DOUGLAS

No. 2922

In the Matter of the Estate of
ANGEL N. YIATCHOS, Deceased.

GUST YIATCHOS, Plaintiff,

vs.

PEARLE W. YIATCHOS, Individually and as Executrix of the Last Will and Testament of Angel N. Yiatchos, Deceased, Defendant,

CONSUL GENERAL OF GREECE, Intervenor.

AGREED STATEMENT OF FACTS—Filed April 20, 1961

It is hereby stipulated and agreed by and between Gust Yiatchos, plaintiff, by his attorneys Whitmore & Whitmore, and Pearle W. Yiatchos, individually and as Executrix of the Last Will and Testament of Angel N. Yiatchos, deceased, defendant, by her attorney Charles W. Cone and Consul General of Greece, intervenor by his attorney Ned W. Kimball, that the within constitutes an Agreed Statement of Facts and a statement of the case showing how the question arose and were decided in the trial court and setting forth so many of the facts, matters and things as are essential to a decision of the questions involved by the Supreme Court of the State of Washington in the appeal in this case.

In addition to stipulating and agreeing hereto, each of the parties by executing this agreement acknowledges service of the Agreed Statement of Facts by receipt of a true-
[fol. 4] copy thereof, and hereby waives notice of settlement, approval and certification by the trial judge and

agrees that the same may be settled, approved and certified in its present form by the trial judge without notice and thereupon shall constitute the record on appeal.

Dated at Wenatchee, Washington this 19th day of April, 1961.

Whitmore & Whitmore, By E. R. Whitmore, Jr., Attorneys for Plaintiff.

Dated at Wenatchee, Washington this 19 day of April, 1961.

Charles W. Cone, Attorney for Defendant.

Dated at Waterville, Washington this 14th day of April, 1961.

Ned W. Kimball, Attorney for Intervenor.

[fol. 6]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF DOUGLAS

[Title omitted]

STATEMENT HOW QUESTIONS AROSE AND WERE DECIDED IN TRIAL COURT—March 17, 1961

This case is concerned with title to certain U. S. savings bonds involved in the above probate proceedings. Summons and complaint were personally served on the defendant and filed in the probate proceedings. The defendant only answered the complaint. Certain legatees named in the decedent's will, acting through the Consul General of Greece, their attorney in fact, properly intervened in the action.

After all pleadings were properly filed, all parties to the action entered into a stipulation as to all the material facts involved. There being only a question of law involved, no testimony was taken, and the trial, duly noted, consisted only of legal arguments supported by briefs of counsel which were heard by the trial court, sitting without a jury, on November 3, 1960.

Following the trial, the matter was taken under advisement by the court. Thereafter a memorandum opinion, which is included in this Agreed Statement of Facts, was [fol. 7] filed by the Court and pursuant and according thereto, findings of fact, conclusions of law and judgment were duly entered in March 17, 1961. This appeal has been duly taken by Gust Yiatchos, plaintiff, from said judgment.

[fol. 8] Essential Facts

Following are the facts stipulated by the parties and found by the court and the conclusions of law entered by the court essential to the decision of the questions involved by this court:

Findings of Fact

I.

That the defendant is the widow and the duly appointed, qualified and acting executrix of the Last Will and Testament of Angel N. Yiatchos, deceased; that the said last Will and Testament is presently in the course of probate in the above entitled court and cause.

II.

That among the property and possession of decedent at the time of his death were the following United States Series E savings bonds on each of which the deceased was designated as owner and the name opposite each bond was designated as beneficiary to whom the respective bond was payable on death, to-wit:

Face Amount	*Number*	*Purchase Date*	*P.O.D. Beneficiary*
$ 50.00	L211140959E	February 1951	Gust Yiatchos
25.00	Q950942219E	"	Gust Yiatchos
500.00	D22883110E	"	Gust Yiatchos
1000.00	M23752285E	"	Gust Yiatchos
1000.00	M23752287E	"	Gust Yiatchos
1000.00	M23752281E	"	Gust Yiatchos
1000.00	M23752280E	"	Gust Yiatchos

1000.00	M23752279E	February 1951	Gust Yiatchos
1000.00	M23752278E	"	Gust Yiatchos
1000.00	M23752777E	"	Gust Yiatchos
1000.00	M23222621E	"	Gust Yiatchos
1000.00	M23222620E	"	Gust Yiatchos
1000.00	M23752282E	"	Gust Yiatchos
1000.00	M23752284E	"	Gust Yiatchos
1000.00	M23752283E	"	Gust Yiatchos
[fol. 9]			
1000.00	M23752286E	"	Gust Yiatchos
500.00	D22512290E	June 1950	Constantinos Yiatchos
500.00	D22512289E	"	Constantinos Yiatchos
500.00	D22512288E	"	Constantinos Yiatchos

that the name "Constantinos Yiatchos" is another name occasionally used by the deceased to designate his brother, Gust Yiatchos or Gust N. Yiatchos, the plaintiff herein and in fact the beneficiary named on all the foregoing bonds, is the plaintiff in this action.

III.

That except for differences in issue dates and face amounts all of said bonds are, in all respects material thereto, in the form of the facsimile bond attached hereto, marked "Exhibit 1" and by this reference made a part thereof.

IV.

That the regulations governing United States savings bonds, including the bonds described herein, issued pursuant to Section 22 of the Second Liberty Bond Act as amended (49 Stat. 21, as amended; 31 U.S.C., 757 C) (31 C.F.R. 315), as amended, insofar as is material hereto are set forth in the instrument annexed hereto, marked "Exhibit 2" and by this reference made a part hereof.

V.

That the defendant was married to Angel N. Yiatchos on the 25th day of June, 1943, and that said marriage continued until the death of Angel N. Yiatchos on the 22nd day of November, 1958, and that at all time between said dates defendant and Angel N. Yiatchos were husband and wife.

[fol. 10]

VI.

That the bonds listed in paragraph 2 herein were purchased during the marriage of defendant and deceased, A. N. Yiatchos, with community funds; that the total appraised value of the estate of decedent is in the amount of Thirty-seven Thousand Two Hundred and Five Dollars ($37,205.00) all of which was the community property of the deceased and the defendant with the exception of the item listed as "Eagle Barber Shop and Fixtures" which was appraised in the amount of Seven Hundred Dollars ($700.00) which was the separate property of the deceased; that the U. S. Savings bonds described herein are not required for the payment of claims against the estate of the deceased.

VII.

That on October 7, 1954, Angel N. Yiatchos made a Last Will and Testament and in the second paragraph of that will he gives, devises and bequeaths all cash and bonds that he may own at the time of his death to his brother Gust Yiatchos and four sisters, naming them, and one nephew, naming him. The four sisters named and the nephew named being residents of Greece, Gust Yiatchos, the brother, being a resident of New York.

VIII.

That Paragraph Second of the Last Will and Testament of Angel N. Yiatchos provides:

"Second: I give, devise and bequeath all the cash and bonds that I may own as of the date of my death to my brother, Gust Yiatchos, 1024 St. John, Bronx, New York, my sisters, Marigoula Fraggaki, Stavzovla Mpatchiari, Photini Lampraki, Krisoula Demetropoulou, all residents

[fol. 11] of Greece, and my nephew Konstatinos Mparbarousis also of Greece." That intervenor Consul General of Greece represents the surviving sisters and the nephew, all residents of Greece.

That from the foregoing Findings of Fact, the Court made and entered the following:

Conclusions of Law

I.

That the United States savings bonds involved in this action were the community property of Angel N. Yiatchos and Pearle Yiatchos at the time of the death of Angel N. Yiatchos on November 22, 1958.

II.

That the community cannot be deprived of community funds by the purchase of government bonds.

III.

That the wife of decedent had a vested property right in all of said bonds equal to that of her husband.

IV.

That all of said bonds should be inventoried in the estate of Angel N. Yiatchos and shall first be applied to the payment of community debts.

V.

That one-half of said bonds, or the proceeds thereof, remaining after payment of debts shall be distributed to Pearle Yiatchos, the widow; the other one-half shall be distributed according to the terms of the Last Will and Testament of Angel N. Yiatchos, deceased.

[fol. 12]

VI.

That judgment should be entered:

1. Dismissing plaintiff's complaint;

2. Granting judgment to Pearl Yiatchos for her costs in this action;

3. Granting judgment to intervenors for their costs in this action;

4. Imposing a trust upon the bonds, as itemized in the Stipulation as to Facts entered into by all parties, for the benefit of the estate of Angel N. Yiatchos, deceased, and Pearle W. Yiatchos, his wife, and that the plaintiff Gust Yiatchos, also known as Constantinos Yiatchos, be directed to endorse the bonds so that the same may be cashed or sold, so that the proceeds will be available as community property of Angel N. Yiatchos deceased, and his surviving wife, and that should he fail or refuse to do so, that a commissioner be appointed by this court for the purposes of endorsing said bonds.

Dated this 17th day of March, 1961.

Felix Rea, Judge.

Presented by: Ned Kimball, Attorney for Intervenors.

* * * * * * * *

[fol. 15]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF DOUGLAS

No. 2922

In the Matter of the Estate of

ANGEL N. YIATCHOS, Deceased.

GUST YIATCHOS, Plaintiff,

vs.

PEARLE W. YIATCHOS, Individually and as Executrix of the Last Will and Testament of Angel N. Yiatchos, deceased, Defendant.

MEMORANDUM OPINION—January 30, 1961

This matter came on for hearing before this Court on the complaint of Gust Yiatchos, as plaintiff, against Pearle

W. Yiatchos, individually and as Executrix of the Last Will and Testament of Angel N. Yiatchos, deceased, wherein the plaintiff, Gust Yiatchos, prays that it be determined by the court and that he be given judgment adjudicating that he is the sole and absolute owner of United States Series E Savings Bonds described in the complaint.

It appears from the file in this matter and from the facts as stipulated by the parties that Angel N. Yiatchos and Pearle W. Yiatchos were husband and wife from June 25th, 1943, the date of their marriage, until the time of the death of Angel N. Yiatchos, November 22nd, 1958.

It also appears that during the years of 1950 and 1951, Angel Yiatchos, with community funds, purchased some 19 [fol. 16] United States Series E Savings Bonds, and that the face value of these bonds is $15,075.00. It also appears that from the exhibit attached to the Stipulation as to Facts, that the bonds were purchased in the name of Angel N. Yiatchos, P.O.D. (which probably mean payable on death) and then the name of Mr. Gust N. Yiatchos or Constantinos Yiatchos. It has been stipulated that Gust Yiatchos and Constantinos Yiatchos are one and the same person.

On October 7, 1954, Angel N. Yiatchos made a last will and testament, and in the second paragraph of that will he gives, devises and bequeaths all cash and bonds that he may own at the time of his death to his brother Gust Yiatchos and four sisters, naming them and one nephew, naming him. The four sisters named and the nephew being residents of Greece, Gust Yiatchos, the brother being a resident of New York.

At the time of the hearing on this matter, it appeared that the three sisters and the nephew, who survived the deceased, had intervened in the action through the Consul General of Greece in San Francisco, and they ask that the attempted transfer of property to Gust Yiatchos in the nature of these bonds be set aside because the same were community property and that one-half of the amount of the bonds go to the surviving widow and one-half be disbursed according to the last will and testament of Angel according to paragraph second of the will. The surviving spouse took the position that the bonds were community property and should be part of the community estate of

Angel N. Yiatchos and distributed according to his last will and testament.

[fol. 17] The Court appreciates the work done by counsel in this matter and the briefs that have been furnished by them to aid in reaching a decision in this matter.

The argument of the counsel for Gust Yiatchos, the plaintiff, is to the effect that these bonds constitute a contract with the United States Government, and that the rights of the persons to an interest in the bonds should be determined according to that contract. It is also argued that, if Gust Yiatchos is not entitled to all of the bonds, that he is entitled at least to a one-half interest in the bonds, because the bonds being purchased with community property were owned one-half by the defendant, Angel N. Yiatchos and one-half by his surviving spouse.

It is also argued on behalf of Gust Yiatchos that the rights of the parties to the bonds are determined by Chapter 14 of the Session Laws of 1943 of the State of Washington, which has now become part of the Revised Code of Washington, being Sections 11.04.230 and 11.04.240 of that code. That law provides that the surviving co-owner of United States Savings Bonds will be the sole and absolute owner of the bonds, and that if the bonds were payable on death to another person that the surviving beneficiary will be the sole and absolute owner of the bonds. It is the argument of the attorneys for Gust Yiatchos that Chapter 14 of the Laws of 1943 was passed to avoid the holding in the case of Decker vs. Fowler, 199 Wash. 549 (1939). It appears to the Court that this 1943 act would probably be controlling under a set of facts such as we had in the Decker case, which did not involve community property interests in any manner. But, the [fol. 18] Court does not feel that this law would be controlling where, as in this case, the bonds were purchased with community funds.

Cases have been cited to the Court from other jurisdictions where courts have taken the stand that this was a contract with the Federal Government and therefore the person named as beneficiary or co-owner in the bonds who survived would be entitled to the bonds. One or two of those cases come from courts in states where they have

the community property system and therefore do have to be given consideration in determining the question here before the Court.

It appears to the Court that the question of property rights in the State of Washington is one of the most important questions to be kept in mind in trying to determine the question here before the Court. The IXth amendment to the United States Constitution is as follows:

"Reservation of rights of the people. The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

Amendment X of the United States Constitution is as follows:

"Powers reserved to the states or people. The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

The right of the States to determine their own property system was never delegated to the United States by the Constitution, therefore it was reserved to the States re-
[fol. 19] spectively, or to the people.

The right of the State of Washington to maintain its community property system, whereby the wife and husband both had a vested rights in all community property acquired after marriage, has been upheld by the United States Supreme Court. A case on this point is the case of Burns Poe, Director of Internal Revenue for the District of Washington vs. H. G. Seaborn, 75 L. Ed. 238, 282 U.S. 101 (1930). The purpose of that case was to determine whether husbands and wives living in the State of Washington had to show all their income as the husband's income, in one tax return, for a purpose of Federal Income Tax, or whether the husband and a wife could each make separate income tax returns and claim a half interest for each in the income of the community. The United States Supreme Court there recognized that the law of the state was controlling as to the wife's ownership of or interest in community property, and it was also stated in the opinion in that case that it is clear that the wife has "in Washington a vested

property right in the community property equal to that of her husband and in the income of the community including salaries or wages of either husband or wife or both. A description of the community system of Washington and of the rights of the spouses and of the powers of the husband as manager, will be found in Warburton vs. White, 176 U.S. 484, 44 L. ed. 555, 20 S. Ct. 404." Therefore, according to the ruling of the United States Supreme Court, a wife in the State of Washington has a vested right in the community property that is acquired by a husband and wife.

It appears to this Court that neither the United States [fol. 20] Congress nor the Washington State Legislature has any right to change the property system in the State of Washington by acts providing for the issuance of United States Savings Bonds.

As was stated by Mr. Cone at the time of the argument on this question, it appears that the Supreme Court of the State of Washington has answered the question before us in the case of In re Allen's Estate, 54 Wash. (2d) 616, 343 Pac. (2d) 867. In that case bonds were purchased with community funds and placed in the name of the husband and wife. Both the husband and wife had been married before and the wife had a son by the prior marriage. The wife passed away and apparently left no will, the husband was appointed administrator and did not inventory the United States Savings Bonds as part of the estate, and at the time of the presentation of the final account and petition for distribution the son of the deceased objected on the ground that the bonds should have been inventoried as part of the community property of this estate. The lower court so held and the supreme court affirmed the lower court.

The following statement is from page 619 of the opinion in the Allen case:

> "All property acquired after marriage except by gift devise or descent is community property. . . ."
>
> "It is undisputed that the series E bonds were purchased with community funds. The bonds so purchased therefore, were community property. If this were not

so, a designing spouse could at once transform community property into separate property by the purchase of United States bonds."

The following statement is from page 620 of the Allen opinion:

"We therefore hold that, irrespective of the Treasury [fol. 21] regulations, a member of the community cannot be deprived of community funds by the purchase of government bonds."

The case of Togliatti vs. Robertson, 29 Wash. (2d) 844, 190 Pac. (2d) 575, deals with the question of United States savings bonds and community and separate property. The following quotation is from page 847 of the opinion in that case:

"If these savings bonds were his separate property, he did not die seized of them. They passed to Katy Togliatti, the surviving co-owner, upon his death. On the other hand, if the bonds were purchased with community funds, he had no right to make a gift of them by naming Katy Togliatti co-owner, and the bonds would be inherited by his widow."

Another case in point is the case of In Re Towey's Estate, 22 Wash. (2d) 212, 155 Pac. (2d) 273. That case concerned the proceeds of four life insurance policies on the life of the deceased husband, John Thomas Towey. The premiums on the life insurance policies had been paid with community funds. The supreme court held that the proceeds of these four policies were community property. The following quotation is from the opinion in that case:

"For the sake of clarity, we are repetitive. The subject matter (proceeds of four life insurance policies) of this controversy is community property, which, of course, was owned equally by John Thomas Towey and his wife (respondent), as all community property, both real and personal, is owned by both spouses equally. That is, respondent had a vested property

right in all of the community property (proceeds of insurance policies and all other assets of the marital community) equal to that of her husband. When the husband died, the assets (insurance proceeds and all other community property) of the marital community should have been applied to payment of debts of the marital community. One half of the community property remaining after payment of debts of the community should have been distributed to respondent widow. The other one-half of the community property remaining after payment of debts of the community [fol. 22] was subject to testamentary disposition of decedent Towey (Rem. Rev. Stat., §1342), and that one half should have been distributed pursuant to the terms of his last will and testament, executed January 17, 1943."

In Marston vs. Rue, 92 Wash. 129, 159 Pac. 111, it is pointed out very clearly that the husband cannot give away property of the community against the wife's consent, and at page 131 in that opinion there is this statement:

"No part of those savings can he make gifts of against her consent, *even to his own relatives.*"

It appears to the Court that it is clear that under the property system in the State of Washington, the bonds purchased by Angel N. Yiatchos, naming his brother, Gust Yiatchos or Constantinos Yiatchos, as beneficiary, were purchased with community funds and are therefore community property of Angel N. Yiatchos and his surviving wife. The surviving wife is entitled to one-half interest in these bonds. The other one-half interest is subject to the testamentary distribution made by the deceased in his last will and testament. Counsel for the plaintiff argue that even though the bonds are found to be community property, their client should be entitled to one-half interest in the bonds inasmuch as Angel N. Yiatchos owned one-half interest. This argument has some appeal and cannot be disregarded without attention. However, it appears to the Court that these bonds are community property

and the interest of Angel N. Yiatchos in those bonds, as well as any other community property, can be disposed of only by last will and testament or by the laws of descent of the State of Washington, if he did not have a last will and testament. The bonds are community property in their entirety. The brother, who is named as the beneficiary on the bonds, has no right to the bonds or to the proceeds thereof by reason of his having been named as beneficiary [fol. 23] on the bonds. These bonds or the proceeds on the bonds are the community property of Angel N. Yiatchos and his surviving spouse, and are the assets of his estate and should be probated as such, and the surviving wife should receive her one-half interest in the bonds and the other one-half should be distributed in accordance with his last will and testament. It being understood that the bonds, like all other community property, are subject to use for payment of community debts.

Therefore, It Is the Opinion of This Court that the complaint of Gust Yiatchos, plaintiff, should be dismissed and the other parties are entitled to a judgment for costs against the plaintiff, and that the interveners be granted a judgment on their cross complaint and for their costs and disbursements in the action.

It Is Further Ordered that a trust be imposed upon these bonds for the benefit of the estate of Angel N. Yiatchos, deceased, and Pearle W. Yiatchos, his wife, and that the plaintiff Gust Yiatchos, also known as Constantinos Yiatchos, be directed to endorse the bonds so that the same may be cashed or sold, so that the proceeds will be available as community property of Angel N. Yiatchos, deceased, and his surviving wife, and that should he fail or refuse to do so that a commissioner be appointed by this Court for purpose of endorsing said bonds.

Done in Open Court this 30th day of January, 1961.

Felix Rea, Judge.

[fol. 24] [File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF DOUGLAS

No. 2922

In the Matter of the Estate
of
ANGEL N. YIATCHOS, Deceased.

GUST YIATCHOS, Plaintiff,

vs.

PEARLE W. YIATCHOS, individually and as Executrix of the Last Will and Testament of Angel N. Yiatchos, deceased, Defendants.

JUDGMENT—March 16, 1961—and Filed March 17, 1961

This cause having come on for trial on the 3rd day of November, 1960, before the above entitled court sitting without a jury, the plaintiff being represented by his attorneys, Whitmore & Whitmore, defendant appearing by her attorney, Charles Cone, and intervenors being represented by their attorney, Ned W. Kimball; and the Court having heard the testimony presented, having examined the evidence submitted and heard the argument of counsel, and heretofore entered its findings of fact and conclusions of law, now, therefore,

It Is Hereby Ordered, Adjudged and Decreed that the plaintiff take nothing by his complaint and that defendant and intervenors have judgment against the plaintiff for their costs in this action.

It Is Further Ordered, Adjudged and Decreed that a trust be and hereby is imposed upon the following United States Savings Bonds:

[fol. 25]

Face Amount	*Number*	*Purchase Date*	*P.O.D. Beneficiary*
$ 50.00	L211140959E	February 1951	Gust Yiatchos
25.00	Q950942219E	"	Gust Yiatchos
500.00	D22883110E	"	Gust Yiatchos
1000.00	M23752285E	"	Gust Yiatchos
1000.00	M23752287E	"	Gust Yiatchos
1000.00	M23752281E	"	Gust Yiatchos
1000.00	M23752280E	"	Gust Yiatchos
1000.00	M23752279E	"	Gust Yiatchos
1000.00	M23752278E	"	Gust Yiatchos
1000.00	M23752777E	"	Gust Yiatchos
1000.00	M23222621E	"	Gust Yiatchos
1000.00	M23222620E	"	Gust Yiatchos
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1000.00	M23752284E	"	Gust Yiatchos
1000.00	M23752283E	"	Gust Yiatchos
1000.00	M23752286E	"	Gust Yiatchos
500.00	D22512290E	June 1950	Constantinos Yiatchos
500.00	D22512289E	"	Constantinos Yiatchos
500.00	D22512288E	"	Constantinos Yiatchos

for the benefit of the estate of Angel N. Yiatchos, deceased, and Pearle W. Yiatchos, his wife, and that the plaintiff, Gust Yiatchos, also known as Constantinos Yiatchos, be and hereby is directed to endorse the bonds so that the same may be cashed or sold, so that the proceeds will be available as community property of Angel N. Yiatchos, deceased, and his surviving wife, and that should he fail or refuse to do so a commissioner shall be appointed by this Court for the purpose of endorsing said bonds.

Done in open court this 16th day of March, 1961.

Felix Ren, Judge.

Presented By: Ned W. Kimball, Attorney for Intervenors.

Approved as to form only & notice of presentment waived March 13, 1961, Whitmore & Whitmore, by E. R. Whitmore, Jr., Attorneys for Plaintiff.

• • • • • • • •

[fol. 30] Judge's Certificate to foregoing transcript (omitted in printing).

[fol. 31]

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

No. 36037

Department One

In the Matter of the Estate of

ANGEL N. YIATCHOS, Deceased.

GUST YIATCHOS, Appellant,

v.

PEARLE W. YIATCHOS, Individually and as Executrix of the Last Will and Testament of ANGEL N. YIATCHOS, Deceased, Respondent.

CONSUL GENERAL OF GREECE, Intervenor.

OPINION—Filed June 28, 1962

Gust Yiatchos appeals from a final judgment in his action to determine the ownership of specified United States Government Savings Bonds, Series E, purchased by his deceased brother, Angel N. Yiatchos, with community funds of Angel N. Yiatchos and his respondent widow, Pearle W. Yiatchos.

Fortunately, the facts upon which the controversy was both tried and appealed are stipulated, so that only the question of ownership of the bonds' proceeds must be decided.

[fol. 32] All purchases were with community funds. On all of the bonds, the appellant was designated as the beneficiary to whom they were payable upon the death of Angel N. Yiatchos, which occurred November 22, 1958.

By will, however, the deceased left all of the bonds to appellant, four sisters and a nephew. By the judgment, the court imposed a trust upon the bonds for the benefit of the surviving widow and his estate, and directed the appellant to endorse them, or, in the event he refused so to do, that a commission be appointed for that purpose.[1] We affirm.

RCW 11.04.230 and RCW 11.04.240[2] do not confer upon [fol. 33] one spouse the power to convert community property into separate property. *In re Allen's Estate*, 54 Wn. (2d) 616, 343 (2d) 867, decided that a husband could not convert community funds into separate property by the purchase of series E bonds. We there said:

> "It is undisputed that the series E bonds were purchased with community funds. The bonds so purchased, therefore, were community property. If this were not so, a designing spouse could at once transform community property into separate property by the purchase of United States bonds."

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[1] "If real or personal property is within the county, the court, in lieu of directing a conveyance thereof by a party or by a commissioner, may enter a judgment divesting the title of any party and vesting it in others, and such judgment has the effect of a conveyance executed in due form of law. When any order or judgment is for the delivery of possession, the party in whose favor it is entered is entitled to a writ of execution or assistance upon application to the clerk." Rule of Pleading, Practice and Procedure 70, RCW Vol. 0.

[2] "If either co-owner of United States savings bonds registered in two names as co-owners (in the altegnative) dies without having presented and surrendered the bond for payment to a federal reserve bank or the treasury department, the surviving co-owner will be the sole and absolute owner of the bond." RCW 11.04.230.

"If the registered owner of United States savings bonds registered in the name of one person payable on death to another dies without having presented and surrendered the bond for payment or authorized reissue to a federal reserve bank or the treasury department, and is survived by the beneficiary, the beneficiary will be the sole and absolute owner of the bond." RCW 11.04.240.

The husband's purchase with community funds of bonds payable to him alone or, after his death, payable exclusively to his brother was in fraud of the rights of the respondent wife, Pearle W. Yiatchos. This was a unilateral attempt to convert community property into separate property, and void *ab initio*. The trial court correctly concluded:

> "That the community cannot be deprived of community funds by the purchase of government bonds."

The decision of the United States Supreme Court in *Free* v. *Bland*, —— U.S. ——, —— S. Ct. ——, —— L. Ed. (2d) ——, slip opinion, May 21, 1962, does not conflict.

The circumstances in *Free* v. *Bland, supra*, differ from the facts presented by this record. The Free bonds were purchased with community funds and were issued to *Mr. or Mrs.* Free. Mrs. Free died, and the controversy was between the surviving husband and Mrs. Free's son by a prior marriage.

[fol. 34] Chief Justice Warren expressly recognized the exception presented by this record. The opinion states:

> " . . . While affording purchasers of bonds the opportunity to choose a survivorship provision which must be recognized by the states, the regulations neither insulate the purchasers from all claims regarding ownership nor immunize the bonds from execution in satisfaction of a judgment. The Solicitor General appearing as *amicus curiae*, acknowledges that there is an exception implicit in the savings bond regulations, including the survivorship provision, so that federal bonds will not be a 'sanctuary for a wrongdoer's gains.' With this, we agree. The regulations are not intended to be a shield for fraud, and relief would be available in a case where the circumstances manifest fraud or a breach of trust tantamount thereto on the part of a husband while acting in his capacity as manager of the general community property. . . . "

This case falls within that exception. The purchase by the husband of United States Government Savings Bonds with community funds is a void endeavor to divest the

wife of any interest in her own property. While the husband is the manager of the community personal property, he is under a fiduciary duty to act for the benefit of the community. *Gannon v. Robinson*, 159 Wash. Dec. 919, 371 P. (2d) —— (1962). A breach of this duty is a constructive fraud.

The status of community property can be changed only by the agreement of both spouses. RCW 26.16.120. All of the bonds in question, being purchased with community funds, remain community property. Respondent widow had a vested one-half interest in the bond proceeds. The descent of decedent's interest is controlled by RCW 11.04.050,[3] and, therefore, must be distributed according to the terms [fol. 35] of the will.

The judgment is affirmed.

Foster, J.

We Concur:

Finley, C.J.
Hill, J.
Weaver, J.
Rosellini, J.

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[3] "Upon the death of either husband or wife, one-half of the community property shall go to the survivor, subject to the community debts, and the other half shall be subject to the testamentary disposition of the deceased husband or wife, subject also to the community debts. In case no testamentary disposition shall have been made by the deceased husband or wife of his or her half of the community property, it shall descend equally to the legitimate issue of his, her or their bodies. If there be no issue of said deceased living or none of their representatives living, then the said community property shall all pass to the survivors, to the exclusion of collateral heirs, subject to the community debts, the family allowance and the charges and expenses of administration." RCW 11.04.050.

[fol. 36] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

[Title omitted]

ORDER DENYING PETITION FOR REHEARING—
September 19, 1962

The Court having considered the appellant's petition for a rehearing herein and the answers thereto by the respondent and the intervenor-respondent,

It Is Ordered that the petition be and it is hereby denied.

Dated this 19th day of September, 1962.

By the Court: R. C. Finley, Chief Justice.

[fol. 37]

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

Douglas County No. 2922

No. 36037

In the Matter of the Estate of

ANGEL N. YIATCHOS, Deceased.

GUST YIATCHOS, Appellant,

v.

PEARLE W. YIATCHOS, Individually and as Executrix of the Last Will and Testament of ANGEL N. YIATCHOS, Deceased, Respondent.

CONSUL GENERAL OF GREECE, Intervenor.

REMITTITUR—September 19, 1962

This is to certify that the opinion of the Supreme Court of the State of Washington filed on June 28, 1962, became

the final judgment of this court in the above entitled case on September 19, 1962. This cause is remitted to the superior court from which the appeal was taken for further proceedings in accordance with the attached true copy of the opinion.

Pursuant to Rule 55 on Appeal, costs are taxed as follows:

One hundred fifteen and 92/100 ($115.92) Dollars in favor of respondent and against appellant and his surety National Surety Corporation.

The Petition for Rehearing was denied September 19, 1962.

cc: Court Reporter
Whitmore & Whitmore
Mr. Charles W. Cone
Mr. Ned W. Kimball

Clerk's Certificate to foregoing paper (omitted in printing).

[fol. 39] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 40]

SUPREME COURT OF THE UNITED STATES

No. 659—October Term, 1962

GUST YIATCHOS, Petitioner,

vs.

PEARLE W. YIATCHOS, etc.

ORDER ALLOWING CERTIORARI—February 18, 1963

The petition herein for a writ of certiorari to the Supreme Court of the State of Washington is granted, and the case is placed on the summary calendar. The Solicitor General is invited to file a brief expressing the views of the United States.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.